

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DUNCAN J. McNEIL, III,  
Plaintiff,  
vs.  
UNITED STATES, et al.,  
Defendants.

No. CV-05-281-AAM

## **ORDER OF DISMISSAL**

This action was transferred here from the Eastern District of New York for improper venue pursuant to §1406(a). It is one of many actions the plaintiff has filed in various districts nationwide in an attempt to circumvent pre-filing review orders entered by the undersigned and now an order which prohibits plaintiff from filing anything in the Eastern District of Washington unless accompanied by the appropriate filing fee. Indeed, the “First Amended Verified Complaint” filed in this case (Ct. Rec. 6) appears to be identical to the amended complaints at issue in CV-05-249-AAM (transferred from the District of Hawaii) and CV-05-263-AAM (transferred from the Western District of Texas).

25 In this captioned matter, the transfer order (Ct. Rec. 3) was filed in the Eastern District of  
26 New York on August 2. On August 9 in CV-05-211-AAM, a case transferred here from the  
27 Middle District of Florida, (Ct. Rec. 8), the undersigned entered an order barring the plaintiff  
28 from filing any further actions in the Eastern District of Washington without payment of the

1 appropriate filing fee. The allegation in plaintiff's "First Amended Verified Complaint" that he is  
 2 under imminent danger of serious physical injury does not persuade this court to make an  
 3 exception to its August 9 order requiring payment of the filing fee. In a bid to gain in forma  
 4 pauperis (IFP) status and to gain additional review of allegations regarding foreign judgments  
 5 and writs already found frivolous by this court, what the plaintiff has done in this action, and in  
 6 other actions filed in districts other than the Eastern District of Washington, is include a  
 7 conditions of confinement allegation. Proof enough of this is the allegation in the First Amended  
 8 Verified Complaint (Paragraph 1.05) that: "Plaintiff is presently under imminent danger of  
 9 serious physical injury, resulting directly from the defendant's acts of retaliation and retribution,  
 10 as a result of and taken to interfere with the plaintiff's lawful acts of execution and enforcement  
 11 of judgments." Furthermore, plaintiff's complaint does not name/identify Spokane County or  
 12 any Spokane County Jail officials as defendants. The plaintiff simply wanted the Eastern District  
 13 of New York Texas to reconsider his frivolous allegations regarding foreign judgments and writs,  
 14 notwithstanding the fact it is obvious that the Eastern District of New York has absolutely nothing  
 15 to do with any of the plaintiff's claims.

16       Were this any other pro se prisoner plaintiff, this court might consider providing an  
 17 opportunity to submit an amended complaint alleging only a conditions of confinement claim and  
 18 if sufficient, grant IFP status. This, however, is not any other pro se prisoner plaintiff. Plaintiff's  
 19 track record of abusing the court system is a lengthy one and clearly established. Accordingly, if  
 20 plaintiff wants to assert a conditions of confinement claim, he will need to include that claim (and  
 21 that claim only) in a complaint accompanied by the \$250 filing fee.

22       Plaintiff will not be allowed to proceed IFP in the captioned matter. His Motion For  
 23 Leave To Proceed IFP (Ct. Rec. 2) is **DENIED** and this action is **DISMISSED with prejudice**.  
 24 Plaintiff will not be allowed to file anything further in the captioned matter with the exception of  
 25 a "Notice of Appeal" to the Ninth Circuit Court of Appeals. **This court certifies that any such**  
 26 **appeal taken is not taken in good faith.** 28 U.S.C. §1915(a)(3) and Fed. R. App. P. 24(a)(3)(A).

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1           **IT IS SO ORDERED.** The District Executive shall enter judgment accordingly and  
2 forward a copy of this order to plaintiff McNeil.

**DATED** this 19<sup>th</sup> of September, 2005.

s/ Alan A. McDonald  
ALAN A. McDONALD  
Senior United States District Judge